205 S. W. 217; *Title Trust Co.* v. *Garrott*, 42 Cal. App. 152, 183 Pac. 470. This much can be said: a reasonable restriction on the use or occupancy of property is not considered void on grounds of "public policy" other than the policy against burdening land with incumbrances. *Wakefield* v. *Van Tassell*, 202 Ill. 41, 66 N. E. 830; *Los Angeles Investment Co.* v. *Gary*, *supra*. Nor is such a restriction as that in the principal case in violation of the Fourteenth Amendment, which applies to states, not individuals. *Civil Rights Cases*, 109 U. S. 3, 11. In both kinds of restrictions, on alienation and on use, the form of the restriction, whether covenant or condition, is immaterial. See Joseph Warren, "Progress of the Law — Estates and Future Interests," 34 HARV. L. REV. 639, 652. But it seems that there is an inconsistency in giving effect to restrictions on occupancy while refusing to do so in cases of restraints on alienation. *Cf. Los Angeles Investment Co.* v. *Gary*, *supra*. This inconsistency becomes more apparent when it is realized that an exclusive occupancy practically amounts to a tenancy or a holding of possession as a grantee. See 8 CAL. L. REV. 188.

EQUITY — MAXIMS — CLEAN HANDS — LIMITATION OF THE DOCTRINE. — The defendant, X, contracted to buy of B land on which there was a first mortgage, for the avowed purpose of establishing a coal business. The plaintiff, A, owner of the adjacent premises, knowing of the contract and the purpose, entered into a restrictive covenant with B prohibiting the establishment of a coal business on the land. In a suit against B for breach of his contract X recovered a judgment which was satisfied. A had purchased the first mortgage, and in a suit to foreclose it the land was sold, upon motion by A, subject to the covenant to X whose objections to the covenant were ignored. A now brings his bill to have X restrained from breaking the covenant. Relief was refused below on the ground that A's hands were not clean. *Held*, that the decree be reversed. *Rubel Bros.* v. *Dumont Coal Co.*, 192 N. Y. Supp. 705 (Sup. Ct.).

The acts of A were of the sort that justifies invoking the doctrine of "clean hands." *Weegham* v. *Killifer*, 215 Fed. 168 (W. D. Mich.), aff'd, 215 Fed. 289 (6th Circ.); *Carmen* v. *Fox Film Corp.*, 269 Fed. 928 (2nd Circ.), *certiorari* denied, 255 U. S. 569. See 31 HARV. L. REV. 492. But *cf. Dering* v. *Earl of Winchelsea*, 1 Cox 318, 319. But the case can be justified on either of two grounds. The doctrine of "clean hands" embodies the concept that equity will not tolerate the use of its remedies to further a wrong. See *Primeau* v. *Granfield*, 180 Fed. 847, 852 (S. D. N. Y.). In order, however, that wrongful conduct may be aided it must be connected with the subject matter of the action. *Lyman* v. *Lyman*, 90 Conn. 399, 97 Atl. 312; *Upchurch* v. *Anderson*, 52 S. W. 917 (Tenn.). See *Bentley* v. *Tibbals*, 223 Fed. 247 (2nd Circ.). In the principal case the relief would not be an aid to plaintiff's wrong. The restriction placed upon the land at the foreclosure sale is distinct from the one attempted to be obtained in prejudice of the defendant's original contract. Secondly, of his two remedies under the contract X elected an action for damages. When his judgment was satisfied he no longer had any rights with respect to the land. *McLendon Bros.* v. *Finch*, 2 Ga. App. 421, 426, 58 S. E. 690, 693. See Amos and Benedict Dienard, "Election of Remedies," 6 MINN. L. REV. 341, 359. A's wrong consisted in his attempt to impair X's rights in the land. The covenant ceased to be a wrong simultaneously with X's termination of his rights. Thereafter equity by enforcing the covenant would not be aiding the plaintiff's wrong.

HABEAS CORPUS — STATE AND FEDERAL JURISDICTION — PRIVILEGE OF FEDERAL PRISONER TO RESIST TRIAL BY THE STATE. — Ponzi was in

the custody of a federal agent serving a sentence imposed by a federal court. By virtue of a writ of *habeas corpus* he was, with the consent of the Attorney General of the United States, brought before the state court for trial. Ponzi filed a petition for a writ of *habeas corpus* against the Justice of the Superior Court and the federal agent, alleging that he was in federal custody and therefore the state court had no jurisdiction. The petition was denied. *Held*, that the prisoner was lawfully taken into the state court. *Ponzi* v. *Fessenden*, 42 Sup. Ct. Rep. 309.

In the United States the usual controversy over writs of *habeas corpus* concerns the power of one sovereign to deprive another of its prisoner. See T. B. Benson, "Habeas Corpus Jurisdiction of Federal and State Courts," 20 VA. L. REG. 241. The general principle is that the first sovereign to acquire jurisdiction retains it until its purposes are satisfied. *Ableman* v. *Booth*, 21 How. (U. S.) 506. *Cf. Mahon* v. *Justice*, 127 U. S. 700. Exceptions are made if the prisoner is detained for a violation of state laws committed in pursuance of the Constitution, laws, or treaties of the United States. *In re Neagle*, 135 U. S. 1. See 21 HARV. L. REV. 204. *Cf.* 11 HARV. L. REV. 190. In the instant case, the first sovereign has waived its exclusive jurisdiction. The prisoner maintains that he too must consent to the jurisdiction before the second sovereign can try him. This contention cannot be supported. The action in the principal case was in harmony with common practice in both federal and state courts. *In re Andrews*, 236 Fed. 300 (D. Vt.); *United States* v. *Marrin*, 227 Fed. 314 (E. D. Pa.). But if ever doubt existed regarding this point, it is now dispelled.

HOMICIDE — INTENT — ACCIDENTAL KILLING IN ATTEMPTED ROBBERY — EFFECT OF ABANDONMENT OF ATTEMPT. — The prisoner with a confederate entered a store to hold up and rob the proprietor. Her screams brought neighbors to the scene before the robbery was completed. The robbers, putting away their revolvers, fled. They were intercepted and drew their guns to force a passage. The prisoner's gun went off, killing a bystander. The defense was based on the plea that the shooting was accidental. A statute provided that "all murder . . . committed in . . . the attempt to perpetrate . . . robbery shall be deemed murder in the first degree." (1920 PA. STAT. § 7974.) *Held*, conviction of murder in the first degree was proper. *Comm.* v. *Lessner*, 118 Atl. 24 (Pa.).

The early common law held that any killing in an attempt to commit a felony was murder. *Reg.* v. *Lee*, 4 F. & F. 63; 1 Hale P. C. 465. *Cf. Reg.* v. *Serne*, 16 Cox C. C. 311. More recent writers suggest that the sharp line between felony and misdemeanor be abandoned and that the rule should be that accidental homicide shall be murder only when done in the commission of or attempt at any act or crime in its nature dangerous to human life. See WHARTON, HOMICIDE, 3 ed., § 92. But under either view homicide in the course of attempted robbery will be murder at common law, and by the proper construction of the Pennsylvania statute and cognate legislation murder in the first degree. See 1 WHARTON, CRIMINAL LAW, 11 ed., § 510. The homicide must take place in the course of the attempt. *Hoffman* v. *State*, 88 Wis. 166, 59 N. W. 588; *People* v. *Hüter*, 184 N. Y. 237, 77 N. E. 6. The mere abandonment of his purpose by the prisoner cannot screen him unless done voluntarily and not simply to escape detection. *Lewis* v. *State*, 35 Ala. 380. See 1 WHARTON, CRIMINAL LAW, 11 ed., § 226. Similarly it cannot mitigate the homicide if the killing bears the necessary close relation to the robbery. *State* v. *Gray*, 19 Nev. 212, 8 Pac. 456. But this still leaves the question: Was this killing in the course of an attempt? There is no rule by which to determine when action, originally aimed at the perpetration of a crime, ceases